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## Findings and Recommendations

**Between January and March 2017, the RCMP External Review Committee (ERC) issued the following findings and recommendations:**

### Current Legislation Cases:

## **C-014** Conduct Authority Decision

The Appellant's spouse advised the RCMP that she had been a victim of domestic abuse by the Appellant. The RCMP conducted a *Code of Conduct* investigation into an allegation that the Appellant had engaged in disgraceful conduct by subjecting his spouse to ongoing domestic violence (Allegation). An Investigation Report comprising witness statements and other material in relation to eight alleged incidents of domestic violence was provided to the Conduct Authority (Respondent).

The Respondent reviewed the eight alleged incidents of domestic violence described in the Investigation Report and found that the Allegation was established. The Respondent also found that there was information in the record indicating that the Appellant made threats toward his spouse. In the Respondent's opinion, those threats formed part of the domestic abuse. The Respondent imposed a number of conduct measures on the Appellant, including a forfeiture of 15 days' pay.

The Appellant appealed the Respondent's decision on the Allegation. The Appellant submitted that the Investigation Report was flawed; that the Respondent relied on inaccurate summaries of witness statements and did not carefully review all of the information before her; that the Respondent erred in some of her findings of fact and assessments of credibility, and that the Respondent's decision raised a reasonable apprehension of bias against the Appellant.

**ERC Findings:** The ERC found that the Appellant could not challenge the contents of the Investigation Report for the first time on appeal. An appeal is a review of the findings and conclusions made by a decision-maker in the initial decision, not a general second chance to revisit evidence anew. The general principle is that appeal bodies should not entertain new arguments. The Appellant had full opportunity to raise any



concerns with the Investigation Report before the Conduct Meeting and his failure to do so left the Respondent no opportunity to address his concerns. The Appellant's assumption that the Respondent would identify on her own his concerns with the Investigation Report does not establish the existence of exceptional circumstances which would warrant the consideration of this ground of appeal.

The ERC also found that nothing in the Respondent's decision suggested that she relied only on summaries of the investigation or witness statements. The Respondent made no reference to a reliance on any such summaries and her descriptions of the incidents which form the basis of the Allegation are generally consistent with the main elements of the full witness statements of the Appellant and his spouse.

The ERC then found that the Respondent's factual findings and credibility assessments did not give rise to a clear or manifest error that was determinative to the decision on appeal. Although the ERC found that the Respondent erred in stating that the Appellant's alleged threats formed part of the domestic abuse without first making a specific finding in that regard, the error was not determinative as the Respondent's ultimate conclusion would not have changed in the absence of the error.

Finally, the ERC found that the Appellant did not establish a reasonable apprehension of bias on the part of the Respondent. The Respondent is at law presumed to act fairly and impartially and the evidence required to rebut this presumption must be substantial. The Appellant's arguments which question the conclusions of the Respondent and her weighing of the spouses' statements would not persuade an informed person, who had read the disputed decision and thought the matter

through, that the Respondent consciously or unconsciously decided this case unfairly.

**ERC Recommendation:** The ERC recommends to the Commissioner of the RCMP that he dismiss the Appellant's appeal and confirm the Respondent's decision.

## **NC-005** **Stoppage of Pay and Allowances**

The Appellant, a married member, engaged in sexual activities individually with two female civilians, MB and MM, on various occasions while on duty. Some of the activities with each of MB and MM took place in the Appellant's police vehicle and in RCMP detachments. A *Code of Conduct* investigation was initiated through which recorded statements were obtained from MB, MM, the Appellant and other members of the Force. In their statements, MB and MM described their respective relationships with the Appellant and both indicated that the Appellant had threatened to harm them if they disclosed the activities. In his statement, the Appellant admitted to the sexual activities but denied that he had made any threats.

The Respondent served the Appellant with a notice of his intent to order the stoppage of the Appellant's pay and allowances (SPA Notice) to which was attached the material that the Respondent had considered in issuing the SPA Notice. While that material included a copy of the Investigation Report and transcripts of two statements given by MB, the Appellant was otherwise left to rely on written synopses in the Investigation Report of his own statement as well as those given by MM and other Force members. In his Response to the SPA Notice, the Appellant argued that such synopses were insufficient disclosure and that he should receive all relevant material which was available to the Respondent. He also argued that the criteria for the

imposition of an Order to Stop Pay and Allowances (SPA) were not met. After reviewing the Appellant's Response, the Respondent ordered that the Appellant's pay and allowances be stopped. In support of this SPA, the Respondent found that, in the context of an SPA process, he was not required to consider or disclose to the Appellant full witness statements. He further determined that the requisite criteria for the imposition of an SPA had been met. The Appellant appealed this decision, arguing that the Respondent breached his right to procedural fairness by failing to consider and disclose all available material. The Appellant also argued that certain comments made by the Respondent in the SPA raised a reasonable apprehension of bias.

**ERC Findings:** The ERC found that in the context of the SPA process, which can have an immediate and critical effect on a member, the Respondent was required to disclose to the Appellant all available relevant evidence including audio recordings of witness statements if no transcript was available. Such steps would ensure that the Appellant had an opportunity to fully participate in the SPA process and make representations effectively. Further, the Respondent was required to consider all available evidence prior to issuing an SPA. The Respondent's omissions in this regard breached the Appellant's right to a fair hearing. The ERC then addressed the Appellant's argument regarding an apprehension of bias. While certain isolated comments made by the Respondent were speculative and evoked connotations which were not reflective of the allegations, they would not persuade an informed person who read the SPA as a whole that there was a likelihood of bias in the Respondent's decision to issue the SPA.

**ERC Recommendations:** The ERC recommends that the adjudicator allow the appeal and declare invalid the SPA issued by the Respondent. The ERC further recommends that the adjudicator (i) order the disclosure to the Appellant of all available written transcripts and/or oral recordings of witness statements, as well as a relevant document, and permit the Appellant to make submissions to the Respondent based on such disclosure; and (ii) remit the matter to the Respondent for a new decision.

**Commissioner of the RCMP Decision:** The Commissioner's decision, as summarized by his office, is as follows:

*In a decision dated April 27, 2017, the Commissioner found that the Appellant established that the SPA Order was issued in a manner that breached the principles of procedural fairness. The appeal is allowed.*

*The Commissioner agreed with the ERC that the Respondent was required to disclose all available and relevant evidence to the Appellant, including witness statements in audio recording or in transcript form. This would give the Appellant the opportunity to present a full and fair response to the Notice of Intent to order the SPA. In addition, the Commissioner held that the Respondent erroneously determined that he was not required to consider all available and relevant evidence prior to issuing the SPA Order. This omission breached the Appellant's right to a fair hearing.*

*Like the ERC, the Commissioner found that it was not necessary to consider the Appellant's arguments on the merits of the SPA Order given the conclusion on the breaches of procedural fairness.*

*The Commissioner accepted the ERC recommendation and declared the SPA*

*Order invalid. Given that the Appellant left the RCMP since filing the appeal, the Commissioner directed the Respondent to ensure that the Appellant's pay and allowances be paid up to the date of his discharge.*

### **Former Legislation Cases:**

## **D-132** Adjudication Board Decision

This appeal related to an incident that occurred on March 11, 2010. The Appellant left his place of work in an unmarked police vehicle. Several pieces of equipment belonging to the RCMP were in the vehicle. While the Appellant was making a stop at a shopping centre, the equipment was stolen from the vehicle. The veracity of the information contained in the statements and the reports provided by the Appellant to his supervisor were called into question. It was only on March 15, 2010, that the Appellant mentioned, in two reports and in a discussion with his supervisor, the stop at the shopping centre under the pretext of going to the bathroom (without stating that he had made purchases). The Appellant was the subject of an allegation of disgraceful or disorderly conduct bringing the RCMP into disrepute in contravention of section 39(1) of the *Code of Conduct*. During the disciplinary hearing before the Adjudication Board, the parties agreed, in light of the details of the allegation, that the Respondent must meet the greater burden of proof in section 45 of the *Royal Canadian Mounted Police Regulations, 1988 (1988 Regulations)* to prove the member's intent to make one or more false, misleading or inaccurate statements. The Adjudication Board then found that the allegation was substantiated. Following the sanction hearing, the Adjudication Board imposed on the Appellant a sanction consisting of a reprimand and forfeiture of five days' pay.

**ERC Findings:** The ERC found that the wording of section 45 of the *1988 Regulations* requires that the misleading or inaccurate statement be made wilfully and that the author knew ("knowingly") that it was misleading, false or inaccurate. The ERC found that the Adjudication Board did not commit a palpable or overriding error by finding that the Appellant had acted knowingly and wilfully when he neglected to tell his supervisor everything regarding his stop at the shopping centre on March 11, 2010, and that his failure to do so until March 15, 2010, was a false and inaccurate statement to a superior officer within the meaning of section 45 of the *1988 Regulations*.

The ERC also found that a member's neglect to provide relevant information in a statement or report under section 45 of the *1988 Regulations*, which makes the statement or report false, misleading or inaccurate, is clearly within the parameters of section 45.

The ERC found that the Adjudication Board had properly considered the reports written by the Appellant and submitted to his supervisor in relation to the other evidence presented by the Appropriate Officer and drew reasonable conclusions regarding the fact that the Appellant had voluntarily neglected to state that he had made purchases at the shopping centre and the impact of this important omission on the sequence of events of March 11, 2010.

**ERC Recommendation:** The ERC recommends that the appeal be denied.

## **G-636** Legal Assistance at Public Expense

The Grievor had been a Constable for 3½ years when he responded to a highest priority and risk call. Dispatch broadcasted a Tone Alert after a 911 caller advised that a

man with a brain injury had fired two shots at a golf course where his former spouse worked and then left the golf course in his truck.

The Grievor was the first officer to encounter the suspect. The Grievor pulled the truck over, exited his unmarked police vehicle and repeatedly ordered the suspect to exit his vehicle and get down on the ground. A witness to the encounter thought the suspect was very slow in complying with the Grievor's demands. A local reporter captured a portion of the arrest on video. The 24-second reporter's video shows the Grievor issuing demands to the suspect; opening the suspect's driver's door; and, when the suspect is kneeling on the ground, kicking the suspect in the head while shouting "Get down". The reporter's video of the kick was shown on local, provincial and national news. The Grievor was suspended with pay and later charged criminally with assault causing bodily harm.

The Respondent authorized two requests for Legal Assistance at Public Expense (LAPE) for the Grievor's initial consultation with a lawyer and for court attendances. The Respondent subsequently terminated the Grievor's LAPE after a stoppage of pay and allowances order (SPA Order) and decision (SPA Decision) was issued against the Grievor. The Grievor grieved the Respondent's LAPE termination decision, arguing that he met the eligibility criteria.

The Level I Adjudicator excluded the Respondent's late Level I submissions and documentation and concluded that he did not have enough information to determine whether the Respondent's termination decision was consistent with policy. He found the Grievor had not established his case and denied the grievance on the merits.

At Level II, the Grievor furnished new evidence from his criminal proceedings to support his eligibility for LAPE: the transcript of a Use of Force expert's testimony that detailed several issues, including a lack of supervision during the arrest, inadequate information relayed from dispatch during the incident, and a lack of training for high risk situations; and, the trial judge's reasons for sentence in which the trial judge found that the responding officers believed that the person they were looking for had been engaged in an active shooting of people at the golf and that there was no evidence that the Grievor acted out of anger or with malicious intent.

### ***ERC Findings:***

#### **Preliminary Matters**

The ERC found that the Level I Adjudicator erred in excluding the Respondent's Level I submissions. The administrative time limits set forth in the RCMP Administration Manual, chapter II.38 do not have the force of law and cannot prevent a Level I adjudicator or the Commissioner from considering a late submission critical to the proper adjudication of the grievance.

The ERC also found that the transcript of the Use of Force expert's testimony and the trial judge's reasons for sentence were admissible at Level II. Both post-dated the Level I decision, the Respondent had an opportunity to comment on their admissibility, the transcript included information relevant to the Grievor's LAPE eligibility, and the reasons for sentence contained analysis relevant to the Commissioner's consideration of the grievance.

#### **Merits**

The ERC found that the Respondent's termination decision was inconsistent with

section 6.1.12 of the *Treasury Board (TB) LAPE Policy* which requires termination only “if at any time during or after the proceedings it becomes clear” that the Grievor did not meet the eligibility criteria set forth in section 6.1.5. The Respondent’s justification for termination was the SPA Decision which did not involve an assessment of the LAPE eligibility criteria. An SPA order and the provision of LAPE each serve different purposes and are based on different criteria. An SPA order is intended to protect the Force’s interests in extreme circumstances while LAPE, which may be provided to a member facing criminal charges, is intended to safeguard the member’s rights. An SPA order is not necessarily inconsistent with the provision of LAPE and is not, in and of itself, justification for termination. In this case, there was no new information, evidence or analysis in the SPA Decision that justified termination of the Grievor’s LAPE. While the reporter’s video may have been sufficient to support the SPA Order, it was not sufficient to terminate the Grievor’s LAPE.

The ERC also found that the Use of Force expert testimony and the reasons for sentence demonstrate that the Grievor met the section 6.1.5 basic eligibility criteria and that a reconsideration and approval of the Grievor’s LAPE requests is required pursuant to section 6.1.13 of the *TB LAPE Policy*.

**ERC Recommendation:** The ERC recommends to the Commissioner of the RCMP that he allow the grievance on the merits and reinstate the Grievor’s LAPE.

If the Commissioner disagrees with the finding that the Respondent’s decision to terminate the Grievor’s LAPE was not consistent with applicable policy, the ERC recommends to the Commissioner that he direct the Respondent, as the approving authority, to reconsider and approve

retroactively the Grievor’s requests for LAPE, subject to the advice of the Advisory Committee on Legal Assistance.

## G-637 Travel / Referability

In May 2009, the Grievor joined a unit that performed relief work at isolated posts. While carrying out the relief work, the Grievor stayed in Crown-owned homes of local members and made claims for private non-commercial accommodation allowance (PNAA) benefits. The Grievor alleged that, in August 2009, the Force began denying PNAA claims of members who stayed in non-commercial accommodations while performing relief work at isolated posts. On March 28, 2014, the Force issued an RCMP Communication (Communication) entitled “*Payment of the Private Non-commercial Accommodation Allowance*”. The Communication stated that, because the PNAA had been inconsistently paid, the Respondent was directing that, “*retroactive to 2011-12-16, a member on relief duties in isolated locations who, while on travel status, resides in Crown-owned housing that is rented by another member will be eligible for the PNAA at the prescribed rate*”.

The Grievor filed a grievance identifying the decision being grieved as the Respondent’s decision in the Communication to establish December 16, 2011 as the date for retroactive eligibility to receive PNAA benefits. In support of his case, the Grievor cited the *National Joint Council Travel Directive* (NJCTD). A Level I Adjudicator denied the grievance on its merits, finding that the Grievor omitted to offer any evidence that the Respondent applied any policy or legislation inconsistently in establishing the December 16, 2011 date. The Level I Adjudicator noted that the Respondent’s authority to establish a retroactive eligibility date for the receipt of a PNAA benefit was found in the *RCMP*



Act. The Level I Adjudicator also found no evidence that the Respondent acted in bad faith. The Grievor resubmitted his grievance at Level II.

**ERC Findings:** The ERC observed that five types of grievances are referable to the ERC, in accordance with subsections 36(a) to (e) of the *Royal Canadian Mounted Police Regulations, 1988*. It found that the present grievance did not fall within the scope of subsections 36(b), (c), (d), or (e), as those subsections all deal with subjects which were not at issue.

The other type of referable grievance, described in subsection 36(a) of the *1988 Regulations*, involves matters relating to “the Force’s interpretation and application of government policies that apply to government departments and that have been made to apply to members”. The ERC found that the present grievance fell outside the ambit of subsection 36(a) as its subject-matter related to a decision by the Respondent, pursuant to his rule making authority set forth in subsections 5(1) and 21(2) of the *RCMP Act*, to establish December 16, 2011 as the eligibility date for retroactive PNAA benefits. In so doing, the Respondent did not interpret or apply the NJCTD. The grievance did not dispute a decision made pursuant to the Communication. Rather, the Grievor disputed the content of the Communication itself (the eligibility date).

**ERC Recommendation:** This grievance is not referable to the ERC. As a result, the ERC does not have the legal authority to further review the matter or to make any findings or recommendations.

## G-638 Relocation / Referability

The Grievor was a newly engaged member of the RCMP at the time of the events

relevant to the grievance. His first post with the Force necessitated a relocation by the Grievor and the sale of his principal residence. The Grievor asked for an extension of the permitted relocation period. The extension was granted on condition that the relocation would be door-to-door, involving no storage of his belongings. The Force relied on Part 9.5 of the RCMP Financial Management Manual (Relocation) (FMM 9.5). The Grievor recalled being warned that, if a storage cost was incurred during the shipment of his belongings, he would have to pay that cost. There was a delay in the closing date of the purchase of the Grievor’s new residence and the Grievor’s household effects were briefly held in storage by the Force’s mover. Subsequently, the Grievor was informed that he owed a significant amount for the costs of storage (and associated handling and delivery) of his belongings during their shipment. The Grievor took the position that he had been informed he may have to pay storage costs but he was now being charged for other relocation costs.

The Grievor filed a grievance grieving the decision of the Force to require the Grievor to pay the costs of storage, warehousing, handling and delivery of his belongings. A Level I Adjudicator denied the grievance on the basis that the Grievor both filed his grievance beyond the expiry of the limitation period for so doing and failed to demonstrate an entitlement to a retroactive extension of the limitation period. No decision was rendered on the merits of the grievance. The Grievor resubmitted his grievance at Level II.

**ERC Findings:** The ERC observed that five types of grievances are referable to the ERC, in accordance with subsections 36(a) to (e) of the *Royal Canadian Mounted Police Regulations, 1988*. It found that the present grievance did not fall within the scope

of subsections 36(b), (c), or (e), as those subsections all deal with subjects which were not at issue. Although the grievance concerned the payment of relocation expenses, it did not relate to the Force's interpretation and application of the RCMP *Relocation Directive* (subsection 36(d)), as the *Relocation Directive* expressly excluded from its scope of application newly engaged members relocating to their first place of employment with the Force.

The other type of referable grievance, described in subsection 36(a) of the 1988 Regulations, involves matters relating to "*the Force's interpretation and application of government policies that apply to government departments and that have been made to apply to members*". The ERC found that the present grievance fell outside the ambit of subsection 36(a) as its subject-matter related to a decision by the Respondent to require the Grievor, a newly engaged member of the Force, to pay for certain storage and related costs involved in his relocation to his first posting. The only policy applicable to the grievance and that either party relied on was FMM 9.5, an internal RCMP policy and not a government-wide policy. No other government policy contemplated by subsection 36(a) was identified as relevant to the grievance.

**ERC Recommendation:** This grievance is not referable to the ERC. As a result, the ERC does not have the legal authority to further review the matter or to make any findings or recommendations.

## G-639 Travel / Referability

The Grievor lived near the National Capital Region (NCR). She suffered from a work-related condition and was off duty sick. The Grievor had received treatment for her condition for several years from an NCR-based health care professional who

then relocated his practice from the NCR to Montréal. The Grievor chose to continue receiving treatment in Montréal and, consequently, incurred travel expenses. The RCMP originally paid the Grievor's travel expenses but later determined that it was not required to do so and would cease payment after a bridging period. The Force would continue payment for the health care services themselves and the Grievor could either transition to a health care professional in the NCR or remain with the Montréal-based professional and assume responsibility for her travel costs.

The Grievor filed a grievance grieving the decision of the Force to cease the payment of her travel costs to Montréal. A Level I Adjudicator denied the grievance on its merits, finding that the Grievor had not established that the Respondent's decision was made contrary to applicable legislation, a government policy or an RCMP policy, most notably, chapter XIV.1 of the RCMP Administration Manual, "*Health Care Entitlements and Benefits Programs*" (AM XIV.1). The Level I Adjudicator noted that the Respondent acted in a manner consistent with AM XIV.1 and did not make any errors or omissions. The Grievor resubmitted her grievance at Level II.

**ERC Findings:** The ERC observed that five types of grievances are referable to the ERC, in accordance with subsections 36(a) to (e) of the *Royal Canadian Mounted Police Regulations, 1988*. It found that the present grievance did not fall within the scope of subsections 36(b), (c), (d), or (e), as those subsections all deal with subjects which were not at issue.

The other type of referable grievance, described in subsection 36(a) of the 1988 Regulations, involves matters relating to "*the Force's interpretation and application of government policies that apply to*



*government departments and that have been made to apply to members".* The ERC found that the present grievance fell outside the ambit of subsection 36(a) as its subject-matter related to a decision by the Respondent to cease the payment of travel costs incurred to receive medical treatment. In making the decision, the Respondent did not interpret or apply the National Joint Council Travel Directive or any other government policy applicable to members as contemplated by subsection 36(a). The grievance related solely to the interpretation and application of an internal Force policy.

**ERC Recommendation:** This grievance is not referable to the ERC. As a result, the ERC does not have the legal authority to further review the matter or to make any findings or recommendations.

## G-640 Isolated Posts

In the autumn of 1997, the Grievor was serving at an RCMP detachment and living in a nearby city with his spouse and young children. The Grievor was offered potentially better paying jobs within the Force, including a transfer to a limited duration isolated post at which he was assured by local supervisors that a Living Cost Differential (LCD) was available. The Grievor accepted a transfer to the isolated post in 1998, largely in light of the LCD. However, unbeknownst to the Grievor, the Treasury Board Secretariat (TBS) cancelled the LCD for the isolated post days before his transfer, pursuant to its authority to do so under the *Isolated Posts Directive* (IPD). The Grievor did not receive an LCD at the isolated post. The Grievor learned in 2007 that the TBS had reinstated an LCD for the isolated post in 2002/3. He promptly inquired into whether he could receive a retroactive LCD for his years of service at the isolated post. RCMP National Compensation Services responded that he was ineligible to receive the benefit.

The Grievor initiated a grievance. The Level I Adjudicator denied the grievance, finding that two of the Grievor's positions were untimely and that his other positions lacked merit. The Grievor filed a Level II grievance, in support of which he offered for the first time email messages that he states confirm that he did not learn of the revocation of the LCD for the isolated post prior to his transfer.

**ERC Findings:** The ERC found that all of the Grievor's arguments should be addressed in full but that the email evidence filed by the Grievor for the first time at Level II was inadmissible and should not be considered by the Commissioner when making his decision. However, the ERC accepted the point the Grievor was trying to make with the emails, as that point was undisputed.

The ERC found that neither party identified any provision of Isolated Post policy which permitted the retroactive payment of the LCD requested by the Grievor. The Grievor was transferred to the isolated post after the TBS revoked the LCD. Therefore, pursuant to the IPD, he was deemed to have received notice of the revocation. Although local superiors told the Grievor that an LCD was available at the isolated post – information that was correct at the time – no member could vary the terms of the IPD. It is unfortunate that the superiors were not in a position to give the Grievor accurate information. Nevertheless, the Grievor was obligated to consult Compensation Services personnel, who were the experts in the area but who had no advanced knowledge of his transfer, to determine the benefits available to him. The presence or absence of reasons for which the TBS opted to revoke the LCD at the isolated post is not relevant to the question of whether there was any authority for the Force to make a retroactive payment of the LCD to the Grievor. Lastly, as the revocation of the LCD applied to all members and public servants posted at the isolated

post during the relevant period, it was not discriminatory, absent further evidence.

**ERC Recommendation:** The ERC recommends to the Commissioner of the RCMP that he deny the grievance.

## G-641 Harassment

In May 2000, the Grievor was travelling on duty as a member of the Prime Minister's Protective Detail team. In June 2003, the Grievor filed a complaint with the Canadian Human Rights Commission (CHRC) containing two allegations that she had been harassed by the Superintendent who had served as the Travel Officer during the May 2000 trip (Alleged Harasser).

In July 2003, the Alleged Harasser advised the Respondent that he was the subject of the Grievor's CHRC complaint. The Grievor did not file either an RCMP harassment complaint or a harassment grievance. The Respondent immediately tasked a Sergeant (the Investigator) with conducting an internal harassment investigation. The Investigator reviewed the RCMP file of the May 2000 trip, interviewed the three witnesses identified in the Grievor's CHRC complaint, the Alleged Harasser, and five additional RCMP members. He also questioned the Respondent about memoranda exchanged between him and the Grievor prior to her 2003 CHRC complaint. According to the Investigator, he made a number of unsuccessful requests to meet with the Grievor. Eventually, in September 2004, the Grievor's lawyer advised the Investigator that the Grievor was unable to participate in the investigation due to her medical condition. The Investigator provided his report to the Respondent which concluded that none of the witnesses corroborated the Grievor's allegations.

In March 2005, the Respondent advised the

Grievor that, as all of the witness statements refuted the harassment allegations, he concluded that the allegations were not substantiated.

The Grievor challenged the Respondent's decision on the basis that the Respondent was biased and in a conflict of interest and, therefore, should not have been the decision-maker. As corrective action, the Grievor requested that the Respondent's decision be reviewed.

Between May 2005 and October 2007, the Grievor made six requests for additional relevant documentation. The Office for the Coordination of Grievances (OCG) requested and obtained three disclosure rulings from Level I Adjudicators. The Respondent complied with the disclosure rulings with the exception of an order to create and provide the Grievor with a transcript of the already-disclosed video recording of the interview with the Alleged Harasser. On October 5, 2007, another Level I Adjudicator found that the Respondent was not required to create a transcript of the interview.

The Level I Adjudicator found that all relevant material had been disclosed to the Grievor, concluded that the Grievor had not provided any evidence that the Respondent was in a conflict of interest or biased, and denied the grievance on the merits.

In 2011, the Grievor submitted her grievance at Level II.

### **ERC Findings:**

The ERC found that the Grievor had not established her grievance.

### Respondent's Subsection 31(4) Disclosure Obligations

The ERC found that the Respondent satisfied

his disclosure obligations. The ERC observed that subsection 31(4) does not require the Force to create evidence. Further, the Grievor had the video of the Alleged Harasser's interview and did not indicate that it was inaudible or otherwise deficient. As there was no evidence on the record that the Grievor's ability to properly present her grievance was impeded, the ERC found that she did not reasonably require the transcript to do so.

#### Reasonable Apprehension of Bias and Conflict of Interest

The ERC found that the Grievor did not establish, on a balance of probabilities, that the Respondent had a conflict of interest or that his role as the decision-maker created a reasonable apprehension of bias.

The ERC noted that the jurisprudence is clear that, absent evidence to the contrary, administrative decision-makers are presumed to act fairly and impartially. The presumption is difficult to negate and the burden of establishing a perception of bias lies with the party who asserts it. In this case, as the Grievor did not provide any arguments to support her assertions of bias, the Grievor failed to discharge this burden of proof.

Although the Grievor did not provide arguments to support her allegation of conflict of interest, the ERC noted that the Record contained evidence that the Respondent had discussed the Grievor's harassment allegations with the Alleged Harasser prior to the investigation and that the Respondent himself was questioned during the investigation. The ERC relied on *Renaud v Canada (Attorney General)*, 2013 FC 18, which stated that the duty to be impartial in a harassment investigation is not incompatible with providing evidence in the investigation unless doing so demonstrates

bias in favour of one of the parties. In this case, the ERC found no evidence to support a finding that the Respondent was in a conflict of interest.

**ERC Recommendation:** The ERC recommends that the Commissioner of the RCMP deny the grievance.

## Commissioner of the RCMP Final Decisions

The Commissioner of the RCMP has provided his decision in the following matters, for which the ERC's Findings and Recommendations were summarized in previous issues of the *Communiqué*:

### Current Legislation Cases:

## C-013 Conduct Authority Decision

(summarized in the June – August 2016 Communiqué) The Appellant became involved in the promotion and sale of a health supplement and jewellery, for which she was financially compensated. The Appellant did not seek approval from the Force to engage in either of these endeavours. In a meeting with a superior officer, once the Appellant's involvement in the two endeavours became known to the Force, the Appellant denied she was selling jewellery. Three allegations were brought against the Appellant. Allegation #1 stipulated that by engaging in these endeavours without authorization, the Appellant had breached section 4.2 of the *Code of Conduct* which requires members to be "*diligent in the performance of their duties and the carrying out of their responsibilities*". Allegation #2 asserted that the Appellant had failed to comply with the HRO Direction by engaging in those endeavours, contrary to section 3.3 of the *Code of Conduct* which requires members to "*carry out lawful orders and directions*".

Allegation #3 alleged that the Appellant had, contrary to section 8.1 of the *Code of Conduct*, lied to a superior in denying that she was selling jewellery. Following a conduct meeting, the Respondent found the three allegations to be established and imposed various conduct measures including a financial penalty of 5 days of pay and a forfeiture of 5 days of annual leave. The Appellant appealed the Respondent's findings on the three allegations and the conduct measures imposed. The ERC recommended to the Commissioner of the RCMP that he allow the appeal in part and make the finding that Allegation #1 is established and that Allegation #2 is not established. The ERC also recommended to the Commissioner that he dismiss the appeal of the Respondent's finding on Allegation #3. The ERC further recommended that the Commissioner allow the appeal in respect of the conduct measures imposed on the Appellant by the Respondent.

**Commissioner of the RCMP Decision:** The Commissioner's decision, as summarized by his office, is as follows:

*The Appellant is an NCO working in a specialized analytical unit. The Appellant was granted permission to engage in secondary employment at a bank, but this permission was withdrawn when the Appellant's work hours were reduced to provide her time to rest for medical reasons. The Appellant was advised that when her medical status allowed her to increase her hours of work per week, suitable work would be provided within the RCMP.*

*The Appellant subsequently became involved in selling health supplements and jewelry. The Appellant was still working reduced hours for medical reasons and did not obtain permission to engage in this secondary employment. When the Appellant was asked by her supervisor about her*

*involvement in selling jewelry she repeatedly denied any involvement. The Respondent initiated a Code of Conduct investigation and found that the Appellant had:*

- *(allegation 1) engaged in secondary employment without permission contrary to s. 4.2 of the Code of Conduct;*
- *(allegation 2) disobeyed an order contrary to s. 3.3 of the Code of Conduct; and*
- *(allegation 3) lied to her supervisor contrary to s. 8.1 of the Code of Conduct.*

*The Respondent imposed the following conduct measures as a result of these findings: a written reprimand, direction that the Appellant work under close supervision for a year, a forfeiture of 40 hours of pay, and a forfeiture of 40 hours of annual leave. The Respondent's findings and the conduct measures he imposed were appealed.*

*The Royal Canadian Mounted Police External Review Committee (ERC) reviewed this appeal and provided recommendations pursuant to s. 45.15 RCMP Act. The Conduct Appeal Adjudicator followed the ERC's recommendations in relation to the Respondent's findings and partially adhered to the ERC's recommendations for conduct measures.*

*The Conduct Appeal Adjudicator dismissed the appeal relating to allegation 3 and confirmed the Respondent's finding that the Appellant had lied to her supervisor. The Conduct Appeal Adjudicator upheld the appeal in relation to allegations 1 and 2 because the decisions were clearly unreasonable – the Respondent's rationale failed to adequately explain the reasons for his findings for both of these allegations. The Conduct Appeal Adjudicator then provided the decision he believed the*

*Respondent should have made. The Conduct Appeal Adjudicator found that the Appellant had engaged in secondary employment without permission (allegation 1) but had not disobeyed an order (allegation 2) in doing so.*

*The Conduct Appeal Adjudicator found that the conduct measures imposed by the Respondent were clearly unreasonable as the Respondent had not provided any reasons for the measures he selected. Based on his review of the evidence the Conduct Appeal Adjudicator imposed the following conduct measures which he believed the Respondent should have imposed: direction to review RCMP materials and policy relating to graduated return to work; direction to work under close supervision for a year; forfeiture of 8 hours of leave; forfeiture of 40 hours of pay; a written reprimand.*

#### **Former Legislation Cases:**

## **D-129** Adjudication Board Decision

*(summarized in the March – May 2016 Communiqué)* The Appropriate Officer appealed an Adjudication Board's decision that the allegation was not established. The member, while off duty, was arrested for driving while impaired by the local police force. The judge at the member's criminal trial ruled that all evidence from the point of arrest was to be excluded from the trial as it was obtained in breach of the member's rights under section 7 (right to liberty) and section 8 (protection against unlawful search and seizure) of the *Charter*. The member was acquitted. The Adjudication Board excluded the post-arrest evidence. The Board also found that the remaining evidence did not establish the allegation. The ERC found that the Board made no error in its analysis of the applicable tests regarding the *Charter* and the remedy sought. The ERC further found that the

Board correctly assessed whether or not the exclusion of the post-arrest evidence would bring the administration of justice into disrepute. Lastly, the ERC found that the Board did not make a manifest and determinative error in its determination of whether the remaining evidence established the allegation. The ERC recommended that the Commissioner of the RCMP dismiss the appeal.

**Commissioner of the RCMP Decision:** The Commissioner's decision, as summarized by his office, is as follows:

*The Appropriate Officer appealed the decision of the Adjudication Board that the allegation was not established. The Commissioner agreed with the Chair of the RCMP External Review Committee that the Adjudication Board made no error in its analysis of the applicable tests regarding the Charter and the remedy sought, correctly assessed whether or not the exclusion of the post-arrest evidence would bring the administration of justice into disrepute, and did not make a manifest and determinative error in its determination of whether the remaining evidence established the allegation. The Commissioner dismissed the appeal and confirmed the Adjudication Board's decision.*

## **G-627** Relocation / Standing

*(summarized in the June – August 2016 Communiqué)* The Grievor presented a grievance against the Force's alleged omission to pay him a transfer allowance in respect of two of his service relocations, pursuant to the RCMP's *Integrated Relocation Policy (IRP)*. The Grievor conceded that the *Foreign Service Directives (FSD)* applied to his transfers; however he argued that since the *FSD* made no mention of and therefore did not rule out entitlement to a transfer allowance, he was

entitled to the transfer allowance provided under the *IRP*. The Respondent argued that only the *FSD* applied to the Grievor's foreign service transfers and that the Grievor received the *FSD* allowances provided under the *FSD*. The ERC found that there was no obligation for the Force to automatically pay an *IRP* transfer allowance, which is only paid if the *IRP* applies to the member's transfer and the member has submitted receipts to support a claim for the allowance. There was no evidence in the record that the Grievor had submitted any receipts or made any claim before presenting his grievance. As there was no duty or obligation to automatically pay the *IRP* transfer allowance, the Force did not commit an omission and, therefore, the Grievor did not have standing to grieve. The ERC also found that the provisions of the *FSD* and the *IRP*, read in their entire context and ordinary sense, clearly established that only the *FSD* applied to the Grievor's foreign service relocations. Thus, the *IRP*'s benefits and allowances were not available to the Grievor. The ERC recommended that the Commissioner deny the grievance on the bases that the Grievor did not have standing and that the grievance was without merit.

**Commissioner of the RCMP Decision:** The Commissioner's decision, as summarized by his office, is as follows:

*The Grievor presented a grievance against the Force's alleged omission to pay him a transfer allowance related to his relocations in 2005 and 2007, pursuant to the RCMP's Integrated Relocation Policy (IRP). The Respondent maintained that the IRP did not apply to the Grievor's foreign service relocations. Level I denied the grievance on the merits. The Commissioner accepted the ERC's recommendations and determined that the Grievor did not have standing as the Force did not commit an omission. The Commissioner also accepted that the Foreign*

*Service Directive (FSD) and the (IRP) clearly establish that only the FSD applies to the Grievor's relocations. The Grievor is not eligible for IRP benefits and allowances in this case. The grievance is denied.*

## **G-628 Harassment**

*(summarized in the September – December 2016 Communiqué)* The Grievor had previously filed a grievance against the Respondent's decision not to approve the Grievor's claim for overtime for attending a meeting of the RCMP's Legal Fund in his role as Staff Relations Sub-Representative. Upon receipt of the grievance, the Respondent removed the Grievor from his acting position as Operations Officer in the Commercial Crime Section. The acting pay for this position was also interrupted, and the Respondent launched an investigation under Part IV of the *RCMP Act* regarding the Grievor's application for overtime. The Grievor filed the present grievance against the Respondent alleging that these acts were reprisals against the Grievor, prohibited under s. 31(5) of the Act. In his Level I submissions, the Grievor also suggested that he considered the Respondent's actions against him to be harassment. The ERC found that the Grievor had established, on a balance of probabilities, that the Respondent had acted in reprisal against him, in violation of s. 31(5) of the Act, but that this behaviour was not harassment within the meaning of the applicable policies. The ERC recommended that the Commissioner allow the grievance.

**Commissioner of the RCMP Decision:** The Commissioner's decision, as summarized by his office, is as follows:

[TRANSLATION]

*The Grievor filed a grievance against the Respondent's decision to relieve him of his acting position as Operations Officer,*



*to stop payment of his acting pay and to launch a disciplinary investigation. The Grievor claimed that the impugned decision constitutes reprisal and harassment following the filing of the G-487 grievance in which the Grievor challenged the Respondent's refusal to approve his claim for compensatory leave for attending a meeting of the RCMP's Legal Fund. The Respondent claimed that his decision does not concern the filing of G-487 and is legitimate given the circumstances surrounding the Grievor's claim. The Level I Adjudicator did not accept the Grievor's allegations on the basis that the Respondent's decision was compatible with the applicable policies.*

*The Commissioner accepted the ERC's recommendations. The Grievor established that reprisal had been taken against him contrary to subsection 31(5) of the Act. The Grievor was not able to persuade the Commissioner that he had been harassed. The grievance is allowed.*

## **G-629** Harassment

*(summarized in the September – December 2016 Communiqué) The Grievor, a Staff Relations Sub-Representative, had previously filed a grievance against a decision from his supervisor not to approve a claim for overtime for his attendance of a meeting of the RCMP's Legal Fund. The Grievor was investigated under Part IV of the RCMP Act because he claimed lieu time off for this trip, which, according to his supervisor, was not eligible for such compensation. Following the investigation, the Respondent met with the Grievor. The purpose of the meeting was to allow the Grievor to provide the Respondent with any further information before the Respondent made a decision on the nature of the disciplinary action to be taken against the Grievor. In this grievance, the Grievor alleges that, during this meeting, the Respondent intimidated him and added*

*to the harassment and abuse of authority he had suffered as a result of the decision to initiate an investigation by threatening to take formal disciplinary action against him for filing his claim. The ERC found that the Grievor had not established that he had been the victim of harassment, abuse of authority or reprisals from the Respondent when the Respondent informed him that he was intending to take formal disciplinary action following a disciplinary investigation. The ERC also found that the Grievor had not met his burden of establishing that the Respondent had failed to comply with harassment policies. The ERC recommended that the Commissioner deny the grievance.*

**Commissioner of the RCMP Decision:** The Commissioner's decision, as summarized by his office, is as follows:

[TRANSLATION]

*The Grievor filed a grievance alleging that the Respondent had abused his authority, harassed him and committed an act of reprisal by threatening to take formal disciplinary action against him and also failed to provide a harassment-free workplace. The Respondent admitted that he informed the Grievor that he was intending to recommend formal disciplinary action, but that these were not threats. Furthermore, the Respondent advanced that he had no reason to believe that the Grievor had been a victim of harassment.*

*The Level I Adjudicator dismissed the merits of the grievance.*

*The Commissioner accepted the ERC's recommendations. The Grievor did not meet his burden of proving that the Respondent abused his authority, harassed him, committed acts of reprisal or failed to provide a harassment-free workplace. The grievance is denied.*

**G-630** Harassment

*(summarized in the September – December 2016 Communiqué)* The Grievor filed a harassment complaint against her supervisor (Alleged Harasser) which contained multiple allegations. As part of the complaint screening process, certain witnesses were interviewed but, despite her requests, the Grievor was not. The Human Resources Officer (HRO) provided a report (HRO Report) to the Respondent. It briefly summarized only certain of the Grievor's allegations, the Alleged Harasser's responses to those allegations and relevant witness statements. The HRO concluded that the Grievor's allegations did not meet the definition of harassment. There is no indication in the record that any witness statements or evidentiary documents were referenced in or attached to the HRO Report. The Respondent then issued a brief decision stating that, based on the information provided, he agreed with the HRO's conclusion. The ERC found that the Respondent failed to review all relevant material, made an uninformed determination and failed to apply the correct screening test. As a result, the Respondent improperly screened the Grievor's Complaint out of the RCMP's harassment complaint process. The ERC recommended that the Commissioner of the RCMP allow the grievance on the merits. The ERC also recommended that the Commissioner apologize to the Grievor for the Force's failure to properly deal with her harassment Complaint and for the delays in the grievance process.

**Commissioner of the RCMP Decision:** The Commissioner's decision, as summarized by his office, is as follows:

*The Grievor filed a grievance after her harassment complaint had been screened out of the RCMP harassment complaint process.*

*Finding that the Human Resources Officer and Commanding Officer did not apply the proper test at the screening stage, nor were they sufficiently informed, the Commissioner allowed the grievance. The Commissioner accepted the recommendations of the Chair of the RCMP External Review Committee and apologized to the Grievor for the fact that the Grievor's harassment complaint was not handled in accordance with policy.*

**G-631** Harassment

*(summarized in the September – December 2016 Communiqué)* The Grievor presented a harassment complaint containing a number of allegations against his superior officer (Alleged Harasser). The Respondent reviewed the harassment complaint to determine if a full investigation was required. In so doing, the Respondent disregarded certain allegations, concentrated on eight allegations he felt were "*related to harassment*" and evaluated those allegations against criteria set forth in the Treasury Board "Screening Tool for the Delegated Manager and the Harassment Prevention Coordinator". The Respondent screened the harassment complaint out of the RCMP harassment complaint process, finding that the Alleged Harasser's conduct was either managerial in nature or not otherwise improper. The ERC found that once the Respondent found that eight of the allegations were "*related to harassment*", he should have screened in the complaint and initiated appropriate action, including exploring mediation and determining if an investigation was required. Instead, he screened the Grievor's harassment complaint out on the bases of substantive determinations which should not have been made without an investigation. The ERC recommended to the Commissioner of the RCMP that he allow the grievance. The ERC further recommended that the Commissioner apologize to the Grievor for the Force's

failure to properly deal with his harassment complaint.

**Commissioner of the RCMP Decision:** The Commissioner's decision, as summarized by his office, is as follows:

*The Grievor filed a grievance after his harassment complaint had been screened out of the RCMP harassment complaint process. The Commissioner agreed with the Chair of the RCMP External Review Committee that the Commanding Officer did not apply the proper test at the screening stage. The Commissioner allowed the grievance and apologized to the Grievor for the fact that the Grievor's harassment complaint was not handled in accordance with policy.*

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